

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION



GERARD J. PUGH,)	
)	
Petitioner,)	
)	
v.)	Case No. CV405-62
)	
HUGH SMITH, Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. In the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, Stat. 1214, Congress amended the federal habeas statute to require that a second or successive motion be certified by a panel of the appropriate court of appeals:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3)(A).

The Seventh Circuit held that this provision “is an allocation of subject-matter jurisdiction to the court of appeals. A district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.” Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). The Eleventh Circuit reached the same result. Hill v. Hopper, 112 F.3d 1088, 1089 (11th Cir. 1997); In re Medina, 109 F.3d 1556 (11th Cir. 1997).

The record indicates that petitioner filed a § 2254 petition on October 27, 2004. The district judge dismissed the petition on March 30, 2005. CV404-184. That petition is currently on appeal to the Eleventh Circuit. Petitioner filed another § 2254 petition on April 18, 2005. Because the instant petition is successive, this Court is not at liberty to consider it. Accordingly, the Court recommends that the petition be DISMISSED.

SO REPORTED AND RECOMMENDED this 20th day of April, 2005.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

United States District Court
Southern District of Georgia

GERARD J. PUGH

vs

HUGH SMITH, Warden

)

)

)

CASE NUMBER CV405-62

DIVISION

SAVANNAH

The undersigned, a regularly appointed and qualified deputy in the office of the Clerk of this district, while conducting the business of the Court for said division, does hereby certify the following:

1. Pursuant to the instructions from the Court and in the performance of my official duties, I personally placed in the United States Mail a sealed envelope, and properly addressed to each of the persons, parties or attorneys named below; and
2. That the aforementioned enveloped contained a copy of the document dated April 20, 2005, which is part of the official record of this case.

Date of Mailing:

April 21, 2005

Date of Certificate

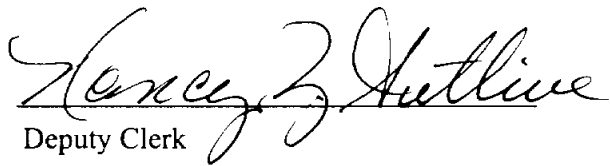
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same date,

or

Scott L. Poff, Clerk

By:


Deputy Clerk

Name and Address

Gerard J Pugh, EF-391535, Georgia State Prison, 100 GA Highway 147, Reidsville, GA 30499-9701

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Copy placed in Minutes

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Copy given to Judge

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Copy given to Magistrate